



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

JAN 18 2006

KILPATRICK STOCKTON LLP
607 14TH Street NW
Washington, DC 20005

In re application of
Ronald Coleman
Application No. 09/697,497
Filed: October 27, 2000
For: METHOD AND SYSTEM FOR USING A
BAYESIAN BELIEF NETWORK TO
ENSURE DATA INTEGRITY

**DECISION ON PETITION
TO WITHDRAW THE
HOLDING OF ABANDONMENT**

This is a decision on applicant's renewed petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO), on August 08, 2005. There is no fee required for this petition.

The petition is **DENIED**.

A review of the file record reveals that a non-Final Office action setting a three-month extendable reply period was mailed July 14, 2004. A Notice of Abandonment was mailed June 13, 2005 stating that no reply to the non-Final Office action mailed July 14, 2004 was received by the Office.

Applicant states that non-Final Office action mailed July 14, 2004 was never received.

There is a strong presumption that Office communications properly addressed and delivered to the United States Postal Services, are in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:

- (1) A statement from the practitioner stating the Office communication was not received by the practitioner;
- (2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and
- (3) A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The docket records indicated above must include a copy of the list of all responses in the practitioner's office with the due date at and around October 14, 2004. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 OG 53 (November 16, 1993).

The instant petition provides the statements required above along with a copy of a docket record of all responses in the practitioner's office with the due date at and around October 14, 2004. Petitioner contends the docket record evidences that the non-Final Office action mailed July 14, 2004 was not received. This is not found persuasive. The docket record provided as "Exhibit A" lists the instant application as the first entry for responses due on October 13, 2004. The docket record evidences receipt, rather than non-receipt, of the July 14, 2004 Office action as it lists a response due approximately three-months from the date of mailing of the Office action.

Applicant may wish to consider filing a petition to revive under 37 CFR 1.137(a) (unavoidable delay) or 37 CFR 1.137(b) (unintentional delay) as discussed below.

I. Unavoidable Delay

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; (2) the petition fee required by 37 CFR 1.17(l); and (3) an adequate showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable.

The showing requirement can be met by submission of statements of fact establishing that the delay in filing the reply was unavoidable. This includes a satisfactory showing that the cause of the delay resulting in failure to reply in a timely fashion to the Office action was unavoidable. Diligence during the time period between abandonment and filing of the petition to revive must also be shown.

As an alternative to filing a petition for unavoidable abandonment, a petition for revival of an application abandoned unintentionally under 37 CFR 1.137(b) might be appropriate.

II. Unintentional Delay

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; (2) the petition fee required by 37 CFR 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

If not previously filed, the reply to the outstanding Office action must accompany the petition to revive. The required items should be promptly submitted under a cover letter entitled "Petition to Revive."

Further correspondence with respect to a petition to revive should be addressed as follows:

By Mail: Deputy Commissioner of Patent Examination Policy
Box 1450
Alexandria, VA 22313-1450

By Fax: (571) 273-8300
Attn: Office of Petitions

By Hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries should be directed to the Office of Petitions Staff at (571) 272-3282.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(b) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition to Withdraw the Holding of Abandonment Under 37 CFR 1.81."

Correspondence with respect to a Petition to Withdraw the Holding of Abandonment under *Delgar Inc. v. Schuyler* should be mailed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

KJL for
Randolph A. Reese
Special Program Examiner
Patent Technology Center 3600
(571) 272-6619

RAR/rjc 09/18/05